

No. 219-4Lab-73/1160.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Haryana Rohtak in respect of the dispute between the workmen and the management of M/s Globe Steels, Ballabgarh.

BEFORE SHRI O.P. SHARMA, PRESIDING OFFICER, LABOUR COURT, HARYANA, ROHTAK

Reference No. 8 of 1971.

between

SHRI KISHAN CHAND AND THE MANAGEMENT OF M/S GLOBE STEELS, BALLABGARH.

Present :—

Shri Ashok Kumar, for the workman.
Shri H.R. Dua, for the management.

AWARD

The material facts leading to this and the connected references No. 9 and 10 of the 1971 which stand consolidated by order, dated 13th September, 1971 of my learned predecessor may be stated as under :—

The management of M/s Globe Steels, Ballabgarh closed its factory on 10th September, 1969 resulting into the termination of services of more than 100 workmen including the present claimants Sarvshri Kishan Chand, Ajit Singh and Vas Dev. The work in the factory was re-started w.e.f. 31st May, 1970. The grievance of the workmen concerned named above is that the management refused to reinstate them without any justification on re-starting of the work in the factory. They raised a dispute but without any satisfactory response from the management and on receipt of the failure reports from the Conciliation Officer, the Governor of Haryana, in exercise of the powers conferrd by clause (c) of sub-section (i) of Section 10 of the Industrial Disputes Act, 1947 referred the disputes pertaining to all the 3 workmen for adjudication to this court, the term of reference in all the three cases being similar, "whether the management be required to reinstate the workman concerned on re-starting of the factory ? If so with what details ?".

Usual notices were given to the parties and they put-in their respective written statements. The management took the pleas that these workmen had failed to report for duty inspite of due notices after the work in the factory had been re-started w.e.f. 31st May, 1970 and after that on 23rd June, 1970 they had received payments of their dues in full and final settlements of their entire claims against the management.

The workmen contraverted the above pleas of the management in their replications.

The following issues arose for determination which are commons in all the cases :—

1. Whether the workman had been paid his dues in full and final settlement of his claims and the workman is not entitled to any relief ?
2. Whether the management gave due notice to the applicant to report for duty and the applicant failed to do so ?
3. Whether the applicant is already employed somewhere else and is not entitled to any relief ?
4. If the above issues are found in favour of the workman whether the applicant is entitled to be reinstated on re-starting of the factory ? If so, with what details ?

The management has examined two witnesses including Shri Manohar Lal Dua, Assistant M.W.1 and Shri J.C. Vig the Factory Manager M.W. 2 and reliance has been placed upon the documentary evidence consisting of receipts Exhibit M.W. 1/1, Exhibit M.W. 1/2, Exhibits M.W. 1/3, newspaper advertisement Exhibit M.W. 2/1, postal receipts Exhibit M.W. 2/2, Exhibits M.W. 2/3, notices sent under U.P.C Exhibit M.W. 2/4, Exhibits M.W. 2/5 and the newspaper cutting Exhibit M.W. 2/3.

The workmen concerned have made their own statements besides examine one oral witness Shri Gulzar Singh an ex-workman of this establishment. They have also proved a joint application made by them to the management, dated 15th June, 1971 Exhibit W.W. 1/1 but it is not clear from the perusal of this application as to what was their actual demand.

The case has been fully argued on both sides and I have given a careful consideration to the facts on record. It is a common ground between the parties that the factory was closed on 10th February, 1969 and it was re-started on 31st May, 1970. The grievance of the workmen is that the management had refused to take them on duty, whereas the plea raised on behalf of the management is that they had failed to report for

duty inspite of due notices and on a later date they had settled their accounts and received payments of their full dues in full and final settlements of their respective claims. The burden was, of course, on the management to establish this fact and on a careful scrutiny of the evidence on record, oral as well as documentary, I find that the management has fully succeeded in discharging this burden successfully. In re-starting the factory notices were given to the workmen concerned asking them to come and join their duties and an advertisement to this effect was also got published in a newspaper, "Sher Sarhed". but as stated by the factory manager Shri J.C. Vig these workmen did not report for duty. There is no reason to disbelieve his statement which finds support from another fact established by the management. The management has brought on record 3 receipts Exhibit M.W. 1/1, Exhibit M.W.1/2, and Exhibit M.W. 1/3 showing payment of Rs 815/72, 981/20 and 858/15 to Sarvshri Kishar Chand, Vas Dev and Ajit Singh workmen, respectively in full and final settlement of their claims against the management. These receipts have been duly proved from the statement of M.W. 1 Shri Manohar Lal and the workmen have admitted their signatures on the same. Their authorised representative contents that these receipts were executed in respect of the previous dues of the workmen and there was no full and final settlement of their claims including the right of reinstatement or re-employment. But there is no evidence to support this contention. As already pointed out, the work in the factory was re-started on 31st May, 1970 while the receipts Exhibit M.W. 1/1 to Exhibit M.W. 1/3 are of 23rd June, 1970. There was no occasion for these workmen to execute these receipts, admitting payments of the amounts mentioned therein in full and final settlement of their all claims or causes of action of whatever kind or nature which they might have against the management until and unless they had no desire to work in the factory and there was an obvious reason for it. It has come in the statements of the workmen that the management had offered lower wages to them after the re-starting of the work in the factory. The presumption is that the workmen concerned in the present references did not accept the lower wages offered by the management and settled their accounts and received payments of their respective claims against the management as already discussed. That disposes of issues numbers 1 and 2 which are decided in favour of the management and against the workmen holding that they had failed to report for duty after re-starting of work in the factory on 31st May, 1970 inspite of due notices given by the management and after that they had received payments of dues in full and final settlement of their entire claims against the management.

Issue No. 3 has not been pressed by the management and in view of my above findings on issues Nos. 1 and 2 the workmen are not entitled to any relief in the present references. The awards are made accordingly. No order as to costs.

Dated the 28th December, 1972.

O. P. SHARMA,
Presiding Officer,
Labour Court, Haryana,
Rohtak.

No. 3095, dated 29th December, 1972.

Forwarded (four copies) to the Secretary to Government of Haryana, Labour and Employment Departments, Chandigarh as required under Section 15 of the Industrial Disputes Act, 1947.

O.P. SHARMA,
Presiding Officer,
Labour Court, Haryana,
Rohtak.

No. 147-4Lab-73/1183.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Haryana, Faridabad in respect of the dispute between the workmen and the management of M/s Technological Institute of Textiles, Bhiwani (T.I.T. Mills).

BEFORE SHRI O.P. SHARMA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA,
FARIDABAD

Application No. 1 of 1971 under Section 33-A of the Industrial Disputes Act, 1947.

between

Shri Sanwal Ram, workman and the management of M/s Technological Institute of Textiles, Bhiwani (T.I.T. Mills).

Present :—

Shri Sagar Ram Gupta, for the Workman.

Shri B.R. Ghai and Shri Nathu Mal Jain, for the management.

AWARD

This complaint under Section 33-A of the Industrial Disputes Act, 1947, has arisen out of the following facts:—

Shri Sanwal Ram complainant was working in the Weaving Department of M/s Technological Institute of Textiles, Bhiwani. The workmen of the said mills had raised an industrial dispute for bonus (I.D No. 51 of 1969) in which he was also a workman concerned. The management dismissed him from service,—*vide* order dated 2nd April, 1971 alleged to have been actually received by him on 12th April, 1971. Feeling aggrieved, he brought this complaint on 26th April, 1971 with the allegations:—

- (a) That he was the Treasurer of the T.I.T. Karamchari Sangh Bhiwani and a protected workman.
- (b) That he was a workman concerned in the industrial dispute No. 51 of 1969 and his dismissal from service was passed on misconduct connected with the said dispute.
- (c) That the management had not obtained express permission of this Tribunal before passing the order of his dismissal from service during the pendency of the aforesaid industrial dispute and as such the impugned order was illegal being in contravention of the provisions of section 33 of the Industrial Disputes Act, 1947.
- (d) That the aforesaid action had been taken against him by the management by way of victimisation on account of his trade union activities.

With the above allegations in brief he prayed for necessary orders against the management as might be considered fit and proper in the circumstances of the case.

Notice of the application was given to the management. The allegations made by the complainant were controverted and it was not admitted that he was a protected workman. It was further urged that the order of his dismissal from service had been made after proper enquiry into the acts of misconduct which were, however, not connected with the industrial dispute referred to above.

The following issues arose for determination from the pleadings of the parties:—

1. Whether the applicant is a protected workman? (on applicant).
2. If issue No 1 is proved whether he has been dismissed for mis-conduct connected with the pending disputes (on applicant).
3. Relief.

The parties have been heard on the preliminary issue No. 1. The complainant has not come into the witness box but his authorised representative Shri Sagar Ram Gupta, General Secretary, T.I.T. Karamchari Sangh, Bhiwani, has made his statement with reference to certain documents including copy of letter dated 16th September, 1970 of the T.I.T. Karamchari Sangh requesting the management to recognise Shri Sanwal Ram as a protected workman (Exhibit W.W. 1/1) copy of the order dated 14th May, 1971 of the Conciliation Officer, Bhiwani recognising Shri Sanwal Ram as a protected workman (Exhibit W.W. 1/2) copy of the letter dated 27th September, 1971 of the T.I.T. Karamchari Sangh requesting the management to recognise Shri Sanwal Ram as a protected workman for the subsequent year (Exhibit W.W. 1/3), printed copy of the demand notice dated, 6th September, 1969 (Exhibit W.W. 1/4), a letter dated September 22, 1970 received from the management (Exhibit W.W. 1/5) letter dated December 1, 1970, written by him to the management (Exhibit W.W. 1/6). The management has led no evidence on this issue.

The case has been fully argued on both sides and I have given a careful consideration to the facts on record and the case law cited by the learned representatives of the parties. The law is well settled. The question whether a particular workman is a protected workman is a question of fact and to establish this fact two conditions are essential, (1) that a registered trade union connected with the industrial establishment concerned has made a request to the management in the prescribed manner for the recognition of a particular workman as a protected workman. (2) that the management has taken a positive action to recognise him as such.

The mere sending of a list of the office bearers of the union to the management with or without the request for their recognition as protected workman is not sufficient and no presumption can be drawn in favour of the workmen in this behalf even if the management does not send any reply to such communications. Recognition of protected workmen is a positive act required to be done by the management and this privilege can not be claimed automatically because of the failure of the management to send a reply to the request of the union made in this connection. 1963-I- LLJ page 680 at 682 (S.C.) and some other authorities cited by the learned representative of the management in the instant case are quite clear on the point. The T.I.T. Karamchari Sangh did communicate to the management a list of the workmen including Shri Sanwal Ram present complainant who were sought to be recognised as protected workman Exhibit W.W. 1/1 on record. The management did not straightway accept or refuse the above request but asked for some particulars of the workman concerned such

as their addresses and the offices held by the particular workman as also the number of the members of the T.I.T. Karamchari Sangh since the number of the protected workmen had to be allotted proportionately to the number of the members of each union, there being more than one recognised trade union of the workers in this establishment. The union sent the reply to this letter Exhibit W.W. 1/6 on record but no further action is shown to have been taken by the management in the matter. The T.I.T. Karamchari Sangh then approached the Conciliation Officer, Bhiwani who recognised Shri Sanwal Ram as a protected workman along with 10 other workmen,— *vide* his order dated 14th May, 1971, copy Exhibit W.W. 1/2.

It would appear from the facts discussed above that the management had not done any positive act for the recognition of the present complainant as a protected workman before the impugned order of his dismissal from service was passed on 2nd April, 1971 alleged to have been actually received by him on 12th April, 1971 or for that matter before the dispute was referred to the Conciliation Officer. No presumption can be drawn in his favour in this behalf merely because the union had sent a list of the workmen including his own name to the management for recognition as a protected workman nor even on account of the failure of the management to send any reply to the union even after the particulars asked for had been furnished. Reliance has been placed on behalf of the complainant on the order dated 14th May, 1971 of the Conciliation Officer whereby he was recognised as a protected workman but his order even is not of any help to him so far as the present complaint is concerned for the simple and obvious reason that said order can not be given a retrospective effect. The learned representative of the complainant contends that the very spirit and the purpose of the law would be negatived if the recognition of a workman as a protected workman is not allowed retrospectively from the date of the request made by the union in this behalf. The contention, I am afraid, has no force and I have not been referred to any case law to support the same. The learned representative of the management on the other hand has cited 26-FJR page 377 wherein it has been held that the decision of the Conciliation Officer did not have retrospective effect and that a workman became the protected workman only from the date of the decision of the Conciliation Officer. A perusal of the order of the Conciliation Officer, Bhiwani read with the list of the workmen submitted by the union,— *vide* Exhibit W.W. 1/1 would show that out of the list of the 22 workmen sought to be recognised as protected workman, only 11 were recognised as such. In the circumstances the management was not in a position to decide as to which of the 22 workmen were entitled to be recognised as protected workmen before the order was finally made by the Conciliation Officer on 14th May, 1971. In other words it cannot be held that there did not exist a genuine dispute between the management and the union in the matter which had to be referred to the Conciliation Officer for decision, as contemplated under rule 61(4) of the Industrial Dispute rules amended upto date.

For the reasons aforesaid, issue No. 1 is decided against the complainant and it is held that he was not a protected workman on the relevant date i.e. the date of the order of dismissal from service. In view of my above findings on issue No. 1 no further proceedings are called for as the provisions of section 33(3) of the Industrial Disputes Act, 1947 are not attracted and the present complaint stands to be dismissed on this ground alone and I order accordingly. There shall be no order as to costs.

Dated the 21st December, 1972.

O. P. SHARMA,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 1428, dated 27th December, 1972.

Forwarded (four copies) to the Secretary to Government Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

(Sd.) O.P. SHARMA,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 154-4 Lab-73/1184.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Haryana, Faridabad in respect of the dispute between the workmen and the management of M/s. Nandani Textile, Mathura Road, Ballabgarh.

BEFORE SHRI O. P. SHARMA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA,
FARIDABAD

Reference No. 55 of 1972
between

THE WORKMEN AND THE MANAGEMENT OF M/S NANDANI TEXTILE, MATHURA ROAD,
BALLABGARH

Present :

Nemo, for the workmen.
Shri V. K. Chandel, for the management.